

III. WORLDCOM AND MCI FAIL TO DEMONSTRATE THAT THE MERGER OF TWO OF THE LARGEST CARRIERS IN THE IMTS AND INTERNATIONAL PRIVATE LINE MARKETS WOULD SERVE THE PUBLIC INTEREST.

In its Comments, GTE analyzed the proposed transaction based on specific, Commission-approved product and geographic market definitions for international services, a realistic discussion of actual and potential competitors, and a reasoned assessment of the very real barriers to entry in international markets.¹⁰⁶ GTE also submitted service- and route-specific data establishing a strong *prima facie* case that the proposed merger would give the merged company substantial market power in both the international private line and international message telephone service ("IMTS") markets.¹⁰⁷ GTE further showed how this market power could be used to raise prices and restrict output, to the detriment of U.S. consumers.

WorldCom's and MCI's response barely confronts these issues. While purporting to follow the *Bell Atlantic/NYNEX* framework, they devote most of their Second Joint Reply to diverting attention from the serious market definition and market participant issues raised by that analysis. However, as discussed below, the Commission has just re-affirmed the product and geographic market definitions that

¹⁰⁶ GTE's analysis faithfully followed the *Bell Atlantic/NYNEX* analytical framework. See *Bell Atlantic/NYNEX Order* at 20008. The Commission reaffirmed its merger analysis framework as recently as March 16, 1998, in the *Motorola/AMSC Order*.

¹⁰⁷ Specifically, GTE demonstrated that the combination of the number two and three international private line carriers would create a new number one carrier, and the combination of the number two and four IMTS carriers would create a considerably larger number two carrier, removing a strong number four carrier from the market. GTE Comments at 56-58.

GTE employed in its analysis, finding that there are separate international private line and IMTS markets; that geographic markets are defined and analyzed in the first instance on a route-by-route basis; and that AT&T, MCI, Sprint and WorldCom are the most significant market participants in the international private line and IMTS fiber optic markets.¹⁰⁸

Because the Applicants have made little effort to rebut GTE's detailed showing, GTE will not replicate herein the complete analysis presented in its Comments and its Petition to Deny.¹⁰⁹ It is compelled, however, to respond to the Applicants' erroneous and results-oriented characterization of the product and geographic markets for international services and their unsubstantiated claims that the merger will promote competition for users of international services.

A. The Applicants' Market Definitions Are Contrary to Precedent, Illogical, and Plainly Intended To Obfuscate the Anticompetitive Effects of the Merger.

In its 1997 Annual Report, WorldCom differentiated between the international private line and IMTS markets.¹¹⁰ And, in a pleading filed less than a year ago, WorldCom acknowledged that there is a distinct IMTS market and that the Commission

¹⁰⁸ Comsat Corporation, *Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, File No. 60 SAT-ISP-97, IB Docket No. 98-60, File No. 14-SAT-ISP-97, RM-7913, CC Docket No. 80-634, FCC 98-78, ¶¶ 26, 27, 56 (rel. Apr. 28, 1998) ("*Comsat Non-Dominance Order*").

¹⁰⁹ GTE Comments.

¹¹⁰ WorldCom 1997 Annual Report at 1, 8-9.

analyzes carrier market power on a route-by-route basis.¹¹¹ Yet, in this proceeding, WorldCom and MCI abandon these distinctions in order to obscure the impact of the merger on international markets. Instead, they propose that the Commission recognize only a single, big "U.S. International Services" market composed of all services, products and countries.¹¹²

The Commission must resist this invitation to forsake reasoned product and geographic analysis. Although the Applicants would have the Commission hum along to "We Are The World," their approach quickly would segue to "Anything Goes." The existing international product and geographic market definitions remain entirely valid, and they must be applied in the instant case in order to preserve the Commission's ability to determine whether consolidation and concentration in vitally important markets truly serve the public interest.

1. Under longstanding FCC decisions and in the marketplace, private lines and IMTS are distinct products.

The Applicants dispute the Commission's longstanding holding that "IMTS and non-IMTS ... constitute separate products,"¹¹³ essentially contending that all

¹¹¹ *Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, File No. 60-SAT-ISP-97 Comments of WorldCom at 1 (filed June 16, 1997) (referring to "the market for international message telephone services"); *id at 3* ("The Commission's firmly-established policy is to make dominant carrier determinations on a route-by-route basis").

¹¹² Second Joint Reply at 47.

¹¹³ The Commission has identified separate international private line and IMTS markets.
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international services are viewed by consumers as fungible.¹¹⁴ This view is wrong for two reasons.

First, this approach is inconsistent with FCC and DOJ precedent. The DOJ/FTC merger guidelines differentiate between service markets based on demand substitutability – that is, whether customers perceive services to be sufficiently substitutable that a small, non-transitory increase in the price of one would result in an increase in demand for the second. Using this approach, the FCC has unwaveringly distinguished between international private line services and IMTS. Indeed, just a few weeks ago, in the *Comsat Non-Dominance Order*, the Commission stated that it would continue to use the *LEC Classification Order* market definitions.¹¹⁵ The *Comsat Non-Dominance Order* specifically confirmed the existence of two separate international product markets, international private line and IMTS markets.¹¹⁶

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See *International Competitive Carriers Policies*, 102 F.C.C.2d 812, 821-23 (1985), recon. denied, 60 Rad. Reg. (P&F) 2d (1986), modified 7 FCC Rcd 577 (1992).

¹¹⁴ Second Joint Reply at 47.

¹¹⁵ See *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Market Place*, 12 FCC Rcd 15757 (1997), *Order on Reconsideration*, 12 FCC Rcd 8730 (1997), *Order*, DA 98-556 (rel. Mar. 24, 1998). The Commission stated that it "relies exclusively on demand considerations to define...relevant product market[s] for...international services" and that "a relevant product market ...[is] a service or group of services for which there are no close demand substitutes." *Comsat Non-Dominance Order*, ¶ 25. The Commission's recent *Motorola/AMSC Order* also restated that, in considering proposed mergers, the agency will define relevant markets "no bigger than necessary" to satisfy the demand substitutability test. *Motorola/AMSC Order* at 52, citing to *Guidelines*, 57 Fed. Reg. at 41, 554 § 1.0 (emphasis added).

¹¹⁶ The Commission concluded that there were five relevant international services

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Second, the FCC's product market definitions are consistent with the views of typical telecommunications users. Consumers in the international marketplace still view international private line service and IMTS as offering different functionalities and therefore not generally being substitutable.¹¹⁷ As explained in GTE's previous filings, consumers distinguish between the "any-to-any" global connectivity that only IMTS can provide and the strict point-to-point links furnished by private lines. Any-to-any needs are not met through private networks connected by "special access arrangements" on both ends, even if some network calls transit "off net" in the relatively few countries that authorize PSTN access. Thus, there is no basis for WorldCom's and MCI's self-serving claim that international private lines and IMTS are either substitutable for one another or part of some amalgamated international product market.¹¹⁸

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markets including: "switched voice service, private line, full-time video, occasional-use video, and earth station services." *Comsat Non-Dominance Order* at ¶ 28, 33, 34. The FCC should require both WorldCom and MCI to specify whether either offers full-time or occasional use video services.

¹¹⁷ As GTE has explained, international private line service and IMTS are distinct products for a number of reasons. "Private line services, for example, generally are offered on a flat-rate basis, while IMTS is offered on a usage basis. In addition, unlike IMTS, private lines are dedicated between two or more points on a full-period, 24-hour basis, and often require dedicated local access arrangements. Private lines typically are used to form corporate private networks that are used only by the particular customer or group of customers. By contrast, the IMTS service provides the general public, on a per-call basis, connectivity from any phone on the public switched telephone network ("PSTN") to any other phone on the PSTN (sometimes called 'any-to-any')." GTE Comments at 46.

¹¹⁸ In particular, WorldCom and MCI provide no market-based evidence that consumer price changes in one product sector result in demand changes in the other, as required to establish service substitutability. Moreover, even if the two international product markets were combined, GTE already has shown that the proposed merger would

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2. The Commission still considers each specific international route a separate relevant geographic market, and the Applicants have offered no reason for departing from this precedent.

According to WorldCom and MCI, "the merged carrier's competitive position will not vary substantially by geographic market,"¹¹⁹ and therefore the Commission should confine its analysis to a single, worldwide geographic market. This proposed eradication of the traditional international route-specific market analysis is at odds with logic and precedent. Indeed, it directly contradicts WorldCom's assertion in a pleading filed less than 12 months ago: "The Commission's firmly-established policy is to make dominant carrier determinations on a route-by-route basis."¹²⁰

GTE agrees. The Commission's longstanding approach is first to analyze the international private line and IMTS markets on a route-by-route basis.¹²¹ This approach also was confirmed in the recent *Comsat Non-Dominance Order*. After its initial analysis, the Commission may aggregate data from route-by-route markets only "when

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create market overlaps still within the "likely to create or enhance market power" category of the DOJ/FTC guidelines. GTE Comments at 58.

¹¹⁹ Second Joint Reply at 50.

¹²⁰ *Comsat Corporation Petition Pursuant to Section 10(c) of the Communications Act of 1934, as amended, for Forbearance from Dominant Carrier Regulation and for Reclassification as a Non-Dominant Carrier*, File No. 60-SAT-ISP-97, Comments of WorldCom at 3 (June 16, 1997).

¹²¹ See *International Competitive Carrier Policies*, 102 F.C.C.2d at 828. Indeed, the Commission applies most of its international pro-competitive policies, such as the Effective Competitive Opportunities ("ECO") Test, on a route-by-route basis. See *Market Entry and Regulation of Foreign-affiliated Entities*, 11 FCC Rcd 3873 (1995).

a group of point-to-point [route-by-route] markets exhibit sufficiently similar competitive characteristics”¹²² – i.e., where “all customers in that area will likely face the same competitive alternatives for a [relevant service].”¹²³ Indeed, it was this framework that led the Commission to conclude, after examining the route-by-route markets served by Comsat, that it could analyze aggregate data for two groups of route-by-route markets that exhibited sufficiently similar competitive characteristics: the routes in which the carrier was the sole provider of capacity, and the routes in which there was sufficient competition.¹²⁴

The argument that the MCI WorldCom’s competitive position would not vary substantially from route to route is belied by the analysis submitted with GTE’s March 13, 1998 Comments. In that analysis, GTE showed that, in 73 private line and 41 IMTS markets, the merger would be likely to create or enhance market power.¹²⁵ Indeed, in many markets, the merged company would be the sole or by far the predominant provider.¹²⁶ In other markets, in contrast, the merger would have relatively little effect

¹²² *Comsat Non-Dominance Order*, ¶ 27 citing *LEC In-Region Interexchange Order* at 15794.

¹²³ *Bell Atlantic/NYNEX Order at 20016* (emphasis added).

¹²⁴ *Comsat Non-Dominance Order*, ¶ 28.

¹²⁵ GTE Comments at 50-51, 54-58, and Appendices 6 and 7.

¹²⁶ Similarly, the Commission should reject WorldCom’s and MCI’s request that it ignore each of the nine international private line routes for which the merged entity would have a 100% market share. Second Joint Reply at 49 n.69. As demonstrated in GTE’s Comments, WorldCom and MCI would have a 100% market share (10,000 HHI) on nine international private line routes including: Angola, Cameroon, Congo, Kenya, Saint Helena, Paraguay, Albania, Hungary, and Kazakhstan. These countries stand the most
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on market concentration. Each country must therefore continue to be analyzed separately to determine whether sufficiently similar competitive alternatives exist.

The need for such route-specific analysis, and the indefensibility of the Applicants' position, is further evidenced by the nature of international calling. If someone in the U.S. wants to call a relative in Argentina, Colombia, or Ecuador – all countries where the merger would raise the IMTS HHI by hundreds of points – that person can take scant comfort from the fact that the merger's effects will be relatively modest in Peru or Bolivia. Similarly, a Danish or Taiwanese expatriate living in the United States likely would face higher rates when calling family in his or her native land because of the tremendous increase in concentration, even though rates to countries such as Austria or Thailand might not be affected. And a U.S. business with a need to send secure data to operations in Kenya or Paraguay or Hungary – all countries where the post-merger private line HHI would be 10,000, indicating a complete monopoly – would not be aided in negotiating a private line service agreement by the fact that competition (albeit much less vigorous than before the merger) might remain on routes to South Africa, Venezuela, and Italy.

Finally, the cases cited by WorldCom and MCI to suggest that the Commission has abandoned the route-specific analysis – the *AT&T Non-Dominance Order* and *Bell*

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to lose from being roped to a monopolist, given their already underdeveloped telecommunications infrastructure. Indeed, the Commission flatly rejected Comsat's similar *de minimis* argument in the *Comsat Non-Dominance Order*, stating that it will look closely at routes to countries with substantial barriers to entry and which were not participants in the WTO Agreement. (Hungary signed the WTO Agreement to allow competition in leased lines and IMTS in 2002.)

Atlantic/NYNEX – are simply misconstrued. In the *AT&T Non-Dominance Order*, the Commission first assessed competitive conditions in markets, then combined routes that AT&T was serving *only* because “AT&T’s market position does not vary substantially from one geographic market to the next,” unlike the present case where the merger of these significant competitors differs on a route-by-route basis.

WorldCom and MCI likewise mischaracterize the Commission’s actions in *Bell Atlantic/NYNEX*. When Bell Atlantic and NYNEX were permitted to merge, each offered virtually no international services, and therefore the Commission did not have to review the various international services product and geographic market definitions. The Commission did confirm, however, that as a general rule each “point-to-point” market constituted a separate geographic market, though the Commission “could consider groups of ... markets where customers faced the same competitive conditions.”¹²⁷

3. WorldCom and MCI create an insupportably broad universe of most significant competitors and rely far too heavily on future capacity.

WorldCom and MCI seek to dilute the evident anticompetitive effects of their proposed merger by reciting an expansive list of most significant market participants and urging the Commission to include all announced future capacity when considering barriers to entry. These efforts are entirely unavailing.

The Applicants cannot simply claim that the proposed merger will have a minute effect on competition because the merged entity will contend with an un-named mob of

¹²⁷ *Bell Atlantic/NYNEX Order* at 20017.

"significant market participants."¹²⁸ As the Commission recently reaffirmed in the *Comsat Non-Dominance Order*, only AT&T, MCI, Sprint, and WorldCom are "most significant participants in the mass market for switched voice and private line service to competitive markets."¹²⁹

Nor can the Applicants escape the effect of their potential control over international facilities by claiming that current cables and satellites will be augmented by more and bigger projects to come. The *Comsat Non-Dominance Order* confirmed the agency's refusal to take into consideration all "planned" projects for international telecommunications infrastructure when assessing a carrier's present day market power.¹³⁰ Especially in markets outside of Western Europe and East Asia, where WorldCom and MCI would have tremendous shares in particular countries, there will be no new entrants capable of offsetting WorldCom and MCI's dominance. Even on routes where new facilities projects will be built, the Commission cannot consider every concept searching for an investor. At a minimum, the Commission should not consider any project for which an FCC license (satellite or cable landing) has not even been granted. Rather, the effect of the planned merger should be assessed against facilities that either exist or will exist over a relatively short period of time.

¹²⁸ Second Joint Reply at 51-54.

¹²⁹ *Comsat Non-Dominance Order*, ¶ 56.

¹³⁰ For example, the Commission flatly rejected Comsat's claim that it should include the Africa One Cable, planned for 1999, in assessing Comsat's market power on U.S.-Africa routes because construction had not even begun. *Comsat Non-Dominance Order*, ¶¶ 47, 121.

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WorldCom and MCI have failed once again to accept clearly applicable market definitions and precedent regarding most significant market participants and the sufficiency of planned entry to ameliorate competitive concerns. Their strategy, which evidently stems from a recognition that the merger would seriously harm consumers of IMTS and international private line services, must not be tolerated any longer. Having failed to provide the necessary data and analyses after three tries, WorldCom's and MCI's applications must be dismissed or denied.

B. WorldCom and MCI Do Not Detail Any Tangible and Verifiable Benefits From the Merger in the IMTS Market and the International Private Line Market.

Continuing a pattern, WorldCom and MCI offer only vague promises of merger-induced benefits in international markets and seek to divert attention from their unsubstantiated claims by asserting that they need not "quantify" merger benefits in *each* market. Indeed, they contend that the Commission cannot possibly expect such a showing, since "[i]t would be implausible for Applicants to be held to this unrealistic standard."¹³¹

Apparently, what is implausible and unrealistic in the instant case is the Applicants' *ability* to meet this standard. Contrary to WorldCom's and MCI's arguments, there can be no reasonable dispute that merger applicants must demonstrate, for *each* market, how "the transaction on balance will enhance and promote, rather than

¹³¹ Second Joint Reply at 99.

eliminate or retard, competition.”¹³² In fact, in the *Bell Atlantic/NYNEX Order*, the Commission criticized the applicants for failing to quantify merger-specific efficiencies in *each* relevant market: “Applicants have not proved that the alleged cost savings will offset the unilateral and coordinated effects of the proposed merger in the *relevant markets*.”¹³³

What scant information WorldCom and MCI do provide is precisely the type the Commission considers suspect: “applicants cannot carry their burden if their efficiency claims are vague or speculative, and cannot be verified by reasonable means.”¹³⁴ Despite these clear instructions, WorldCom and MCI proffer only unquantified and unsubstantiated assertions that the merger somehow will create “end-to-end global networks”; “seek to satisfy their customers’ requirements”; and “produce significant cost saving synergies that ultimately will reduce the international rates that U.S. consumers pay.”¹³⁵

None of these claims is accurate, much less supported and quantified.¹³⁶ The *Bell Atlantic/NYNEX* standard requires that claimed efficiencies be “achievable *only* as

¹³² *Bell Atlantic/NYNEX* at 20063.

¹³³ *Bell Atlantic/NYNEX* at 20066 (emphasis added).

¹³⁴ *Bell Atlantic/NYNEX* at 20064.

¹³⁵ Second Joint Reply at 46, 102-103.

¹³⁶ Nor, as discussed in section V, below, is the Applicants’ showing of post-merger cost savings any more rigorous.

a result of the merger.”¹³⁷ WorldCom and MCI apparently rest on the combination’s *potential* to improve service quality and lower prices through global end-to-end networks (essentially, whole circuits). Yet, end-to-end service is not an efficiency gain resulting *only* from this proposed merger. All major carriers, and carrier alliances, are transitioning to whole circuits with end-to-end control over lines, customer marketing, sales, support and billing. Indeed, both the WorldCom 1997 Annual Report¹³⁸ and the WorldCom and MCI Second Joint Reply discuss at great length WorldCom’s present and apparently successful progression to whole circuit connections here and abroad, even before any merger.¹³⁹ Nothing about this combination between WorldCom and MCI is a precondition for whole circuits or global service; as the Commission is aware,

¹³⁷ *Bell Atlantic/NYNEX* at 20063 (emphasis added).

¹³⁸ In the WorldCom 1997 Annual Report, WorldCom states that it already has “end-to-end networks in place, providing all of the key telecommunications service offerings” and offers “virtual networks for multi-billion dollar, global corporations.” WorldCom 1997 Annual Report, 2, 11. WorldCom also states that it “is positioned to offer customers seamless, end-to-end service over its own networks” as a single point of contact. *Id.*, 12. WorldCom boasts of its elaborate network facilities in Europe and Asia including: Amsterdam, Berlin, Brussels, Cologne, Dublin, Düsseldorf, Frankfurt, Geneva, Hamburg, Hannover, London, Milan, Munich, Paris, Stockholm, Stuttgart, Zürich, Hong Kong, Singapore, Tokyo, and Sydney. *Id.*, 7, 16, 18-9.

¹³⁹ For example, the Applicants state that “WorldCom has constructed significant network facilities in Europe, including metropolitan area networks in London, Paris, Frankfurt, Stockholm, Amsterdam and Brussels,” and WorldCom is “already rapidly expanding” in Asia. Second Joint Reply at 46. Also, MCI “is an active participant in competitive strategies abroad, including ‘second operators’ in Mexico and New Zealand.” *Id.* at 103.

other carriers – AT&T, BT and GlobalOne, to name three – already have achieved similar results.¹⁴⁰

In short, WorldCom and MCI fail to document *any* concrete, cognizable anticipated gains from the proposed merger. Absent verifiable benefits, the competitive harms indisputably outweigh any gains, compelling rejection of the WorldCom/MCI applications.

IV. THE APPLICANTS ARE MORE LIKELY TO FREEZE OUT RESIDENTIAL CUSTOMERS THAN ACT AS AN “ICEBREAKER” IN THE LOCAL EXCHANGE MARKET.

A. The Applicants Rely Heavily on the “Icebreaking” Effects of the Merger on Local Exchange Competition But Have Provided No Information To Support Their Arguments.

WorldCom and MCI pin their public interest case on the claim that the merger will produce a strong local competitor capable of mounting a significant challenge to the incumbent LECs. They provide no evidence, however, to substantiate this assertion. Nor do they explain how the merged company will bring widespread competition to the local exchange, given that WorldCom and MCI both compete to serve only the lucrative high-end business market and have no apparent intent to provide competitive

¹⁴⁰ WorldCom and MCI claim that the merger will further the goals of the *Benchmark Order* and the WTO Basic Telecom Agreement. See Second Joint Reply at 146. Nothing could be further from the truth. Both the *Benchmark Order* and the WTO Basic Telecom Agreement were designed to promote competition in international telecommunications markets. By contrast, the merger between two huge U.S.-based international facilities-based service providers will undermine international services competition by eliminating the current strong number two and three international private line carriers and the number two and four IMTS carriers.

residential service. In addition, they fail to address MCI's assertion (made in the context of the SBC/SNET merger) that, "in the near term, the loss of one" significant local exchange market participant "adversely affects competition."¹⁴¹

In essence, the Applicants attempt to sidestep the public interest hurdle by presuming that the merger of two significant potential competitors in a market that currently is dominated by incumbent LECs is inherently pro-competitive. This approach is fundamentally misguided. Under the *Bell Atlantic/NYNEX* standard, WorldCom/MCI must demonstrate – not just promise – that the merger will enhance competition in the local exchange.

1. The Applicants' claim that the merger will produce a super-CLEC is unsupported by evidence and belied by their business strategies.

As GTE has explained throughout this proceeding, WorldCom and MCI have utterly failed to provide the information required to perform a *Bell Atlantic/NYNEX* analysis. The Second Joint Reply does nothing to fill this gap. The Applicants still have not identified the local markets in which they overlap, provided maps of their existing and planned facilities, revealed future marketing strategies, or even explained why a combined WorldCom/MCI would be any better able to compete in the local exchange market than either company standing alone.

Instead, the Applicants baldly assert that bigger is better, that the local markets they serve are populated by numerous other actual and potential competitors (none of

¹⁴¹ Comments of MCI, Applications of Southern New England Telephone Corporation and SBC Communications, Inc., CC Docket No. 98-25, filed Mar. 30, 1998 at 6.

whom is identified), and that the merged company will spread competition throughout the land.¹⁴² Such assertions do not even come close to satisfying the clear mandate of *Bell Atlantic/NYNEX*; in lieu of facts, the Applicants have provided only philosophy. Even in the absence of data, however, their claims are inherently untenable.

Local competition is a tale of two markets - business and residential.¹⁴³

WorldCom and MCI both focus their competitive efforts on the business market, to the exclusion of all else. This focus is not surprising, given that ILECs have been forced for years to price local business services above cost as a means of keeping residential rates below cost. Predictably, the Applicants want to go where the money is.

Even WorldCom and MCI acknowledge that competition for business customers is "blossoming"¹⁴⁴; in reality, such competition is intense in many urban areas and is rapidly expanding to smaller businesses and suburban locations. The Applicants (through Brooks, MFS, and MCImetro) have been driving forces behind that competition. They compete aggressively with the incumbent LEC and with each other. As a result, though, it is hard to credit unsubstantiated claims that a combination of these two significant competitors would enhance competition in the business sub-market. If anything, the opposite would appear to be true.

¹⁴² See generally Second Joint Reply at 5-11.

¹⁴³ At one point, MCI and WorldCom acknowledge that there are separate business and residential customer segments. Second Joint Reply at 6-7. However, they subsequently ignore this distinction in discussing the competitive effects of the merger, apparently on the mistaken theory that there is so little existing competition that there is no need to look separately at different customer groups. See *id.* at 6-8.

¹⁴⁴ *Id.* at 6.

As the Commission is well aware, the story in the residential market is far different. Largely because the retail rate for residential services is below cost in many areas, competition in this sub-market has been slow to develop. WorldCom, of course, has exhibited a strong and unwavering aversion to serving residential customers. In this regard, its CEO, Bernie Ebbers, has stated that “[o]ur focus is primarily on business customers”¹⁴⁵ and that “[n]ot AT&T, not MFS or anyone else, is going to build local telephone facilities to residential customers. Nobody ever will, in my opinion.”¹⁴⁶

For its part, MCI has been scrambling to exit the local residential market ever since the merger was announced. For example, in a recent New York Times article, MCI spokesman Brad Burns stated that, “[r]ather than lose money, we decided to stop selling the service [to residential customers in New York].”¹⁴⁷ Further, Burns said that he could not predict when or if MCI will resume offering local residential service.¹⁴⁸ In addition, MCI’s President, Timothy Price, vowed in a recent speech that MCI will proceed “with the only business that makes sense” – providing facilities-based service to business customers.¹⁴⁹

¹⁴⁵ K. Russell, *Ebbers: WorldCom, Mississippi Paired for the Future*, Mississippi Business Journal, May 12, 1997, at 13.

¹⁴⁶ M. Mills, *Hanging Up On Competition?*, Washington Post, June 1, 1997, at ¶ 1.

¹⁴⁷ MCI Stops Pursuing Metropolitan N.Y. Residential Customers, New York Times, April 15, 1998.

¹⁴⁸ *Id.*

¹⁴⁹ Remarks of Timothy F. Price at the National Press Club, at 4 (Jan. 22, 1998)

Since neither company currently serves residential customers or has disclosed any intent (let alone firm plans) to do so after the merger,¹⁵⁰ it is difficult to credit claims that the new entity will become a competitive juggernaut. At best, the merger will have no pro-competitive effects in the residential sub-market. More likely, the merger will squelch once and for all any plans that MCI previously had to compete for residential consumers, just as the mere pendency of the merger apparently has impelled MCI to retreat from its pre-existing efforts to do so.

In sum, the Applicants' promise to "break the ice" in the local market is unproved and, evidently, empty. The heart of their public interest claim, therefore, is simply missing.

2. MCI itself has claimed elsewhere that the loss of even a single most significant competitor in the local exchange market is cause for concern.

The only certain outcome of this merger for local exchange markets is that it will eliminate one actual (in some locations) and potential (in others) most significant competitor. As the Applicants acknowledge,¹⁵¹ and as the Commission found in *Bell Atlantic/NYNEX*, MCI is "among the most significant market participants in the mass market for local exchange access" service.¹⁵² While the Applicants claim that

¹⁵⁰ The Applicants simply affirm their commitment not to abandon current residential subscribers after the merger – a commitment that rings rather hollow given MCI's subsequent abdication from the New York market. See Second Joint Reply at 11-13.

¹⁵¹ *Id.* at 9.

¹⁵² *Bell Atlantic/NYNEX Order* at 20029.

WorldCom/MFS/Brooks should not be considered a most significant potential competitor, since the Commission did not identify it as such in *Bell Atlantic/NYNEX*, changed circumstances in the past several months clearly render WorldCom a company that "has the capabilities and incentives to acquire a critical mass of customers in the relevant markets and to do so relatively rapidly."¹⁵³ At the time of *Bell Atlantic/NYNEX*, WorldCom had not yet acquired MFS and Brooks. In addition, the tremendous price-to-earnings ratio and resulting market capitalization commanded by WorldCom give it the ability to be a major force in local competition. Accordingly, following the merger, in at least 26 markets, there would be a loss of one significant actual or potential most significant competitor.

In the context of their own merger, the Applicants downplay the significance of such a loss, stating without support that the combined company will be better able to compete than either WorldCom or MCI standing alone. Subsequent to the Second Joint Reply, however, MCI took a very different position in comments filed on the SBC/SNET merger application. There, it warned that "the loss of one participant" from among SBC, AT&T, MCI, and Sprint in the Connecticut local exchange market "adversely affects competition."¹⁵⁴ The Applicants have made no effort to explain why

¹⁵³ *Bell Atlantic/NYNEX Order* 20029-30.

¹⁵⁴ Comments of MCI, Application of Southern New England Telephone Corporation and SBC Communications, Inc., CC Docket No. 98-25, at 6. GTE does not agree with MCI that SBC should be considered a most significant actual or potential competitor to SNET in Connecticut. The *Bell Atlantic/NYNEX* decision only suggests that contiguous ILECs may be potential most significant competitors. Under MCI's theory, every major ILEC would be considered a potential most significant competitor to every other ILEC – a position that is plainly unsupported by the law.

this holds true in Connecticut, but not in any of the 26 markets where they operate competing local networks.

B. The Applicants' Allegation That GTE Is Challenging the Merger In Order To Forestall Local Competition Is Absolutely False.

The Applicants gratuitously suggest that GTE's opposition to the merger stems from a desire "to prevent real local competition from ever getting started."¹⁵⁵ MCI and WorldCom, of course, reflexively characterize ILECs as the "evil empire" bent on stamping out competition and subjugating consumers. Given this predilection, their attribution of such intentions to GTE in this proceeding is not the least bit surprising. Nor, however, is it the least bit accurate.

GTE believes that it has made its reasons for opposing this merger clear. First, the merger would permit the combined company to dictate the terms, prices and quality of interconnection to the Internet backbone, with severe repercussions for all consumers and providers of Internet-based services. Second, the merger would transform WorldCom from a responsive, low-cost supplier of wholesale long distance capacity into a reluctant provider wary of reducing profits from its newly acquired retail customer base. This transformation would stop resale in its tracks as a competitive force, raising prices to residential and small business customers and undermining GTE's rapidly growing long distance business. Third, the merger would give the merged entity absolute or nearly absolute control of numerous international routes, to

¹⁵⁵ Second Joint Reply at 19.

the plain detriment of resellers such as GTE and consumers making calls to the affected countries.

Plainly, the Applicants' allegation of anticompetitive intent is nothing more than a smokescreen – an effort to shift attention away from the grave concerns raised by the proposed merger and bash the anti-ILEC drum ever more insistently. Even if they honestly believed that GTE is opposing this merger out of protectionism, that perception is hopelessly off the mark. GTE's opposition is based on legitimate and compelling concerns. The Applicants have been given numerous opportunities to address those concerns, but they have absolutely failed to do so. The merger, consequently, must be stopped.

V. THE APPLICANTS HAVE FAILED TO CARRY THEIR BURDEN OF DEMONSTRATING THAT THE MERGER WILL SERVE THE PUBLIC INTEREST.

As GTE demonstrated in its earlier filings,¹⁵⁶ the Commission requires merger applicants to show that "the transaction on balance will enhance and promote, rather than eliminate or retard, competition."¹⁵⁷ Moreover, any claimed efficiencies underlying the asserted pro-competitive effects of a merger must be: (1) achievable only as a result of the merger, (2) sufficiently likely and verifiable, and (3) not the product of reductions in output or increases in price.¹⁵⁸

¹⁵⁶ See GTE Comments at 90-92; GTE Petition to Deny, CC Docket No. 97-211, at 6-7 (filed Jan. 5, 1998).

¹⁵⁷ *Bell Atlantic/NYNEX Order*, at 20063.

¹⁵⁸ *Bell Atlantic/NYNEX Order*, at 20063-64.

MCI and WorldCom do not even attempt to meet this standard. Rather, based on a misreading of the recent *ARDIS/AMSC* decision, they proclaim themselves exempt from having to explain how they expect to realize 23 billion dollars in cost savings.¹⁵⁹ Indeed, their only effort to address the efficiency issue is a cursory, conclusory, and wholly unilluminating declaration that raises more questions than it answers.¹⁶⁰

In section IV above, GTE explained that the heart of the Applicants' public interest case – the supposedly "icebreaking" effect of the merger on local exchange competition – is unsubstantiated and irreconcilable with WorldCom's and MCI's strategy of serving only high-end business customers, who already enjoy considerable competitive alternatives. In this section, GTE will rebut the Applicants' claims that they need not verify the claimed efficiencies. GTE also will show that MCI's and WorldCom's figures are unsupported, vastly overblown, and, to the extent valid, actually confirm that there are significant barriers to entry in the long distance market.

A. The Applicants' Contention That They Do Not Have To Make a Detailed Showing of Public Interest Benefits Is Without Merit.

Citing the recent *Motorola/AMSC* decision, the Applicants contend that claimed efficiencies need not be "individually quantifiable and audited" and characterize their asserted cost savings as "based on reasonable projections."¹⁶¹ Indeed, MCI and WorldCom go so far as to argue that "[u]nder the [*Motorola/AMSC*] precedent for non-

¹⁵⁹ Second Joint Reply at 97-99.

¹⁶⁰ Second Joint Reply, Exhibit B, Affidavit of Sunit Patel ("Patel Affidavit").

¹⁶¹ Second Joint Reply at 99.

dominant carriers equally applicable here, Applicants here have certainly provided adequate information to confirm that the expected efficiencies are 'sufficiently likely' to occur and are reasonably verifiable."¹⁶²

The Applicants' reading of *Motorola/AMSC* is indefensible. That decision neither explicitly nor implicitly creates a lower or different hurdle for non-dominant carriers. The reason that Motorola and AMSC did not have to quantify and verify dollar savings resulting from their merger is that they did not claim *any* such savings¹⁶³ – let alone savings on the order of the magnitude promised here, which are larger than the gross national product of many third world nations. Unlike ARDIS and AMSC, WorldCom and MCI have made specific representations about cost savings resulting from the merger, and it is now up to them to detail the sources of those savings and all underlying assumptions and quantitative analyses.

In actuality, *Motorola/AMSC* confirms the *Bell Atlantic/NYNEX* requirement that applicants bear the burden of verifying any asserted efficiencies. Specifically, WorldCom and MCI are required to show "both that the merger specific efficiencies will occur, and that they sufficiently offset any harm to competition."¹⁶⁴ The Applicants persist in arguing that the second largest telecommunications transaction in history, which involves a tremendous increase in concentration in critically important markets,

¹⁶² *Id.*

¹⁶³ The applicants in *Motorola/AMSC* based their public interest case on the creation of a ubiquitous wireless network and the development of innovative communications offerings. *Motorola/AMSC Order*, at 5214.

¹⁶⁴ *Id.* at 5213.

should be permitted to skate through the Commission's review process based on unsubstantiated promises simply because it involves two "non-dominant" carriers. The Commission's decisions, however, quite properly create no such exemption. Rather, every merger must be assessed based on its own specific facts, regardless of the identity of the parties. Where the applicants, as here, intentionally and repeatedly fail to provide the relevant facts, the only appropriate recourse is to deny the applications for willfully disregarding the applicable law.

B. The Applicants' Claims of Efficiencies and Synergies Remain Unsupported and Unverifiable.

- 1. WorldCom and MCI did not even address, let alone rebut, GTE's compelling showing that the claimed cost savings are grossly overstated.**

GTE's March 13 Comments raised several fundamental doubts about the Applicants' claimed efficiencies. For example, GTE explained that the data underlying the claimed \$23 billion in savings were never "examined, reviewed, or compiled by independent accountants" and are incapable of being verified.¹⁶⁵ GTE further pointed out several apparent substantive flaws with WorldCom and MCI's analysis. First, "the Applicants appear to be counting the full amount of expected savings from self-provisioning access, without offsetting those savings by the revenues that an independent WorldCom would have received from MCI." Second, "the parties have greatly overestimated the available access savings resulting from more efficient

¹⁶⁵ GTE Comments at 93-94.

trunking of traffic exchanged with incumbent LECs." Third, the claimed savings from WorldCom's ability to use MCI's assertedly more favorable international settlement arrangements "dematerialize once scrutinized." Fourth, and perhaps most important, the tremendous increase in profit margin projected by 2002 is inconsistent with their characterization of the long distance market as vigorously competitive.¹⁶⁶

WorldCom and MCI have not even acknowledged, let alone attempted to rebut, these basic points. Instead, they persist in hiding the ball, refusing to provide the data and assumptions underlying their claimed cost savings and protesting that "it would be impossible . . . to replicate all of that work" ¹⁶⁷ Presumably, however, this work has already been performed; surely the boards of WorldCom and MCI did not vote to approve what was, at the time, the largest merger in history based on rough, back-of-the-envelope calculations. Moreover, it is the Applicants who have promised that their "enormous" savings¹⁶⁸ will assure that the merger is in the public interest. Having placed \$23 billion in play, they now must document and verify their claims.

¹⁶⁶ *Id.* at 94-96, citing to Harris LD Affidavit at 39-43.

¹⁶⁷ Patel Affidavit at 2.

¹⁶⁸ Second Joint Reply at 101 (citing Carlton/Sider Declaration at ¶ 7).